REMARKS

Applicants respectfully note that the non-acceptance of the terminal disclaimer is entirely improper in that MPEP 1490 plainly states that "where the attorney or agent of record signs the disclaimer, **there is no need** to comply with 37 CFR 3.73(b)." Applicants' representative, Jonathan Hallman, signed the terminal disclaimer as an attorney of record as indicated by the power of attorney filed December 3, 2003 in this application. Applicants note that the rejection of the terminal disclaimer would have been proper if it been signed by the assignee BUT that was not the case here. Accordingly, the terminal disclaimer was entirely proper according to the rules and overcomes the double patenting rejection.

Applicants respectfully traverse the rejection of claims 25 and 25 as being obvious over the newly-cited Mochizuki reference (USP 7,020,780). Applicants note that the Mochizuki scheme is plainly a "host-based" DRM implementation. The host PC (the laptop 104 of Figure 3) requests access to content on disk 100 by sending a request for the "cipher key" to the software house 110. When the host PC has this cipher key, it can access the content.

In sharp contrast, claim 25 is directed to a media-player-based DRM scheme in which an engine reading a storage medium controls the DRM implementation rather than the host PC. Thus, claim 25 includes engine-based act of "receiving a request from the host device at the engine to unlock the locked file." Note that the host PC in Mochizuki in no way ever requests any storage device/engine to unlock content. Similarly, it is the engine in claim 25 that is authenticated with the server and which receives the complement key – in sharp contrast, the Mochizuki host asks the software house for the cipher key. Accordingly, claim 25 is patentable over Mochizuki.

The Sims reference adds nothing further in that Applicant readily concedes that the general DRM concept of authentication was in the prior art. But what was not in the prior art was the inventive storage-engine-based DRM method of claim 25, which has the powerful advantage over Mochizuki of being much less susceptible to hacker attack. in that a user at the host of claim 25 has no access to the DRM capability within the storage engine.

Accordingly, claim 25 and its dependent claim 26 are allowable over the cited prior art.

With regard to the "new matter" rejection of claim 26, Applicants again note that subject matter that is inherently disclosed is not new matter if it is later made explicit. For example, if Applicants disclose "sphere," it is not new matter to later refer to the sphere's

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surface since that is inherently present even though Applicants never expressly stated "the surface of the sphere." Here, Applicants have made it abundantly clear that they are describing a storage-engine-based DRM scheme involving authentication using a secure session key transmitted from the storage engine to the host. If the host doesn't ever return the session key, the storage engine has wasted its time. In reality, once the host has the secure session key, that host is authenticated and need merely prove possession of the secure session key to the [storage] engine to prove its authentication. Accordingly, Applicants have written support for this limitation. However, in an effort to move this case to allowance, the objected-to limitation has been removed from claim 26.

CONCLUSION

For the above reasons, pending Claims 25 and 26 are in condition for allowance and allowance of the application is hereby solicited. If the Examiner has any questions or concerns, a telephone call to the undersigned at (949) 752-7040 is welcomed and encouraged.

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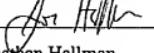
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Jonathan Hallman

Respectfully submitted,
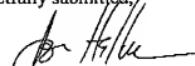
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